

SERVICE DATE – JUNE 15, 2012

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 511 (Sub-No. 6X)

CENTRAL RAILROAD COMPANY OF INDIANAPOLIS—ABANDONMENT  
EXEMPTION—IN HOWARD COUNTY, IND.

Decided: June 14, 2012

Central Railroad Company of Indianapolis (CERA) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 2.84 miles of rail line on its Tipton Industrial Lead, between mileposts 55.66 and 58.5 in Howard County, Ind. Notice of the exemption was served and published in the Federal Register on May 17, 2012 (77 Fed. Reg. 29,456). The exemption is scheduled to become effective on June 16, 2012.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on May 22, 2012. In the EA, OEA states that CERA served its historic report on the Indiana State Historic Preservation Office (SHPO) for its review and comment, pursuant to 49 C.F.R. § 1105.8(c). In a letter dated May 7, 2012, the SHPO stated that the proposed abandonment would not affect historic properties. However, the SHPO has requested that CERA notify it and appropriate parties within two days in the event that previously unknown archaeological sites, human remains, funerary items or associated artifacts are discovered during any post abandonment salvage activities. Accordingly, OEA recommends a condition that, in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during CERA's salvage activities, CERA shall immediately cease all work and notify OEA, interested Federally recognized tribes, and the SHPO. OEA states it would then consult with the SHPO, interested Federally recognized tribes, CERA, and other consulting parties to determine whether mitigation measures are necessary.

Additionally, OEA states that it conducted a search of the Native American Consultation Database to identify Federally recognized tribes that should be consulted regarding the undertaking. According to OEA, the Miami Tribe of Oklahoma was shown as having ancestral connection to the project area and may therefore be interested in the proposed project. Accordingly, OEA states that it was sending a copy of the EA to this tribe for review and comment.

Comments to the EA were due June 6, 2012. OEA states in its final EA that one comment was received. OEA states that, in a letter submitted by the Indiana Department of Environmental Management (IDEM), IDEM stated that it knows of no existing hazardous waste sites or hazardous material spills within the right-of-way of the proposed abandonment. IDEM noted that there have been several incidences of hazardous spills from one-eighth to one-quarter

mile from the right-of-way, but that these have been remediated and pose no harm to the project area. IDEM cautions, however, that there may be a potential for residual contamination of the railroad bed from rail crossties that may contain arsenic and pentachlorophenol. Accordingly, OEA recommends that a new condition be imposed requiring CERA to consult with IDEM regarding IDEM's concerns.

OEA recommends that the condition previously recommended in the EA, as well as the additional condition, be imposed upon any decision granting abandonment authority. Accordingly, the conditions recommended by OEA will be imposed. Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

In the EA, OEA also states that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On May 22, 2012, the City of Kokomo, Ind. (City) filed a request for the issuance of a notice of interim trail use (NITU)<sup>1</sup> for two segments of the right-of-way, totaling 2.35 miles, to negotiate with CERA for acquisition of the two segments for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. The two segments are comprised of the right-of-way between: (1) milepost 55.66 near Gano Street and milepost 57.39 at the south right-of-way of the proposed U.S. Highway 35, a distance of 0.62 miles; and (2) milepost 57.88 at the north right-of-way of the proposed U.S. Highway 31 and milepost 58.5 at the south end of the Nickel Plate Trail, a distance of 1.73 miles. By response filed on May 22, 2012, CERA has indicated its willingness to negotiate with the City for interim trail use.

Pursuant to 49 C.F.R. § 1152.29, the City has submitted a statement of its willingness to assume financial responsibility for the two specified segments of the line, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

Because the City's request complies with the requirements of 49 C.F.R. § 1152.29 and CERA is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the two specified segments of rail line during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012) (effective May 30, 2012). If no agreement is reached within 180 days, CERA may fully abandon the two specified segments of rail line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

The City also has requested imposition of a public use condition under 49 U.S.C. § 10905 for the two specified segments of rail line. The City requests that CERA be prohibited from

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<sup>1</sup> The City filed a request for a NITU on May 18, 2012, which was superseded by the revised request filed on May 22, 2012.

disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and that CERA be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, ballast, culverts, and tunnels, for a 180-day period from the effective date of the abandonment authorization. The City's justification for its request is that these structures have considerable value for recreational trail purposes. The City states that the corridor connects to the north with another 37-mile public trail and that the requested public use condition would allow this trail to be connected to a population center of approximately 58,000 residents. The City states that the 180-day period is needed to review title information and begin negotiations with CERA.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Because the City has satisfied these requirements, a 180-day public use condition will be imposed, requiring CERA to keep intact the right-of-way for the two specified segments (including trail-related structures such as bridges, trestles, ballast, culverts, and tunnels) and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from the June 16, 2012 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on December 13, 2012, while the trail use negotiating period will run 180 days from the service date of this decision and notice (until December 12, 2012). If a trail use agreement is reached on a portion of the right-of-way for the two specified segments prior to December 13, 2012, CERA must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CERA is not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on May 17, 2012, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the City to negotiate with CERA for trail use for the above two specified segments of rail line, for a period of 180 days from the service date of this decision and notice (until December 12, 2012) and to permit public use negotiations as set forth below, for a period of 180 days commencing from the June 16, 2012 effective date of the exemption (until December 13, 2012). The abandonment is also subject to the conditions: (1) that, in the event that any unanticipated archaeological sites, human remains, funerary items, or associated artifacts are discovered during CERA's salvage activities, CERA shall immediately cease all work and notify OEA, interested Federally recognized tribes, and the SHPO. OEA shall then consult with the SHPO, interested Federally recognized tribes, CERA, and other consulting parties to determine whether mitigation measures are necessary; and (2) that prior to the commencement of salvage activities, CERA shall consult with IDEM to ensure that IDEM's concerns are appropriately addressed.
3. The request for a NITU, under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29, as to the two specified segments of rail line noted above is granted.
4. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, CERA may discontinue service and salvage track and related materials. CERA shall otherwise keep intact the right-of-way underlying the tracks, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the two segments.
5. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
6. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities described in ordering paragraph 5 above.
7. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

8. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the two segments of rail line covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

9. If an agreement for interim trail use/rail banking is reached by December 12, 2012, for the two specified segments of rail line, interim trail use may be implemented. If no agreement is reached, CERA may fully abandon the line.

10. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.